Supreme Court, U.S.
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No. 97-498

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

ANNE L. ALLEN, a/k/a NANCY ALLEN, an incompetent, by ANNE M. ALLEN, her guardian, and ANNE M. ALLEN, in her own right and as personal representative of WALTER E. ALLEN, her deceased husband,

Petitioners,

vs.

MONTGOMERY HOSPITAL and PAUL R. CASEY, JR., M.D.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION OF RESPONDENT MONTGOMERY HOSPITAL

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QUESTION FOR REVIEW

Whether the Supreme Court of Pennsylvania properly determined that the limited immunity accorded those that provide adequate treatment to the mentally ill, pursuant to the Pennsylvania Medical Health Procedure Act, 50 P.S. §7171, et seq., does not violate any constitutional right?

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Docket No. 97-498

In The Supreme Court
of the United States

October Term, 1996

ANNE L. ALLEN, a/k/a NANCY ALLEN,
an incompetent, by ANNE M. ALLEN,
her guardian, and ANNE M. ALLEN,
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MONTGOMERY HOSPITAL and
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Respondents.

On Petition for Writ of Certiorari
to the Supreme Court of Pennsylvania

BRIEF IN OPPOSITION OF RESPONDENT MONTGOMERY HOSPITAL

STATEMENT OF JURISDICTION

This Honorable Supreme Court has jurisdiction of the instant petition and brief in opposition thereto pursuant to 28 U.S.C. §1257(a).

ADDITIONAL STATUTORY PROVISION

Section 104 of the Pennsylvania Mental Health Procedures Act:

> Adequate treatment means a course of treatment designed and administered to alleviate a person's pain and distress and to maximize the probability of his recovery from mental illness. It shall be provided to all persons in treatment who are subject to this act. It may include in-patient treatment, partial hospitalization, or out-patient treatment. Adequate in-patient treatment shall include such accommodations, diet, heat, light, sanitary facilities, clothing, recreation, education and medical care as are necessary to maintain decent, safe and healthful living conditions.
>
> Treatment shall include diagnosis, evaluation, therapy, or rehabilitation needed to alleviate pain and distress and to facilitate the recovery of a person from mental illness and shall also include care and other services that supplement treatment and aid or promote such recovery.

Pa. Stat. Ann. tit. 50, §7114(a) (supp. 1997).

COUNTERSTATEMENT OF THE CASE

Procedural History.

Petitioners challenge provisions of the Pennsylvania Mental Health Procedures Act, 50 P.S. §7101 et seq, that provide for limited immunity from suit to professionals rendering "adequate treatment" to mentally ill individuals as mandated by the Act. The limited immunity, provided for in §114 of the Act, 50 P.S. §7114, requires a minimum finding of gross negligence in order to establish liability on the part of professionals rendering such care.

The Court of Common Pleas of Montgomery County, Pennsylvania, determined that the gross negligence standard provided for in §7114 should apply to this case and also considered and ruled against plaintiffs' constitutional equal protection argument. (A.46-50a[1]). At

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[1]All page references preceded by "A" refer to the Appendix to the petition opposed by respondent. All page references preceded by "R" refer to the record before the

trial the jury did not find any gross negligence.

On appeal, a majority of the Pennsylvania Superior Court found that the gross negligence standard should not apply to the facts of the case and did not reach the equal protection issue. Dissenting, the Honorable John G. Brosky concluded the immunity provisions of the statute were constitutional. (A.38-42a).

In its June 17, 1997 opinion and order, the Pennsylvania Supreme Court, by a majority of five to one justices, reversed the Superior Court and, in addition to finding that the trial court had properly applied the gross negligence standard to this case, found that petitioners' equal protection arguments had no merit. (A.9a).

Facts.

On November 20, 1982, Montgomery Hospital admitted appellee Nancy Allen through its emergency room, where appellant Dr. Paul R. Casey attended to her.

Pennsylvania Supreme Court.

Appellee, suffering from a fever and dehydration, was an "urgent transfer" from Norristown State Mental Hospital, where she had been an in-patient since 1980. (R.182a, 186a, 188a, 200a, 260a). She was admitted pursuant to an agreement whereby Montgomery Hospital provided medical treatment to Norristown State Mental Hospital patients requiring medical attention. (R.11a, 177-78a, 180a).

Appellee was being treated at Norristown State Mental Hospital for "severe medical retardation profound with psychosis." She had little cognitive function. She was incoherent. She was not oriented to person, place or time. She was incapable of understanding or consenting to her treatment. (R.194-95a, 213a). Her history at Norristown State Mental Hospital included intermittent bouts of agitation and of trying to walk and falling, as well as sliding out of chairs. (R.192a, 211a, 220a, 252a). She had been kept there in a locked room where she had fallen

down repeatedly. She was bruised, and her enzyme levels reflected substantial muscle damage. (R.334-36a, 373a).

There was reason to believe that appellee's immediate difficulties, including her agitation, were caused by the various psychiatric drugs administered to her at Norristown State Mental Hospital. (R.220-22a, 226-27a, 250a, 333-34a). Indeed, her condition was usual for patients sent from Norristown State Mental Hospital. (R.306a-307a, 378-379a).

Appellant, Dr. Casey, who with his staff had experience treating mental patients, took over management of the drugs that had been prescribed for appellee at Norristown State Mental Hospital, removing all except Vistaril, which was to be administered as needed for agitation. He approved the use of a posey restraint when it was initiated by the nursing staff as a therapeutic and safety measure for appellee. He regarded appellee as a short term patient who he hoped could be returned to

Norristown State Mental Hospital quickly. (R.204a, 228-29a, 236-37a, 247-48a, 250a, 261a, 305a, 312a, 335a).

Since appellee was not experiencing severe psychiatric symptoms such as hallucinations or suicidal tendencies, the doctor saw no need for a psychiatric consultation. (R.223a, 233a). Like other psychiatric patients in need of acute medical care, appellee was admitted to a medical floor of Montgomery Hospital. (R.126a, 246a).

Appellee wore the posey restraint most of her stay at Montgomery Hospital until December 5, 1982. The purpose of the restraint was to prevent her from injuring herself. (R.126a, 246a). The vest-like garment allowed her to be secured to her bed to prevent her from falling out of it but also afforded her the ability to sit up and adjust her body position. The restraint is commonly used for patients who are permanently or temporarily psychotically disoriented. (R.240a, 253-56a).

The restraint was removed from appellee so that she could be accompanied to the bathroom, cleaned up when she soiled herself or was washed or bathed, or otherwise received special care. (R.125a, 148a, 199a, 234a, 236a, 257a, 258a, 262a, 263a, 264a, 266a).

As a result of the administration of Vistaril and the posey restraint, together with the medical treatment provided to her at Montgomery Hospital, appellee's condition improved and she was scheduled to be transferred back to Norristown State Mental Hospital on December 7, 1982. (R.239a, 259a).

However, in the early morning hours of December 5, 1982, appellee managed to partially remove the posey restraint and fell between the mattress and guard rails of her bed, suspending herself above the floor by her own weight with part of the restraint cutting off her oxygen. She weighed 175 lbs., and the nurse who found her required assistance to free her from this position. (R.159-

67a, 168a, 198a, 325a). Although the hospital staff saved appellee's life, she suffered brain damage.

At trial, appellants presented no fewer than four expert witnesses who testified inter alia that the use of the posey restraint on plaintiff was entirely appropriate. (R.282-88a, 320-21a, 363-64a, 335-36a).

The Pennsylvania Supreme Court Decision.

In its decision determining that the gross negligence standard of 50 P.S. §7114 properly applied to this case, the Pennsylvania Supreme Court also found, analyzing the issue under Pennsylvania law, that the constitutional challenge of petitioners was without merit. (A.9a, n.7).

The court noted that equal protection does not prohibit classifying certain persons and classes of persons differently than others and stated:

> The mentally ill require more specialized or intensive care than the non-mentally ill. In order to protect the mentally ill and provide them with adequate treatment in the least restrictive manner, the General Assembly enacted the MHBA. Absent willful misconduct or gross negligence, the General Assembly provided immunity to health care providers of the mentally ill in order to ensure that this important government interest is met. Thus, the limited restriction on the right to sue in the MHBA there is a reasonable relation to a substantial government interest.

REASONS FOR DENYING THE WRIT

1. The Writ Should Be Denied Because The Partial Immunity Provisions Of The Pennsylvania Mental Health Procedures Act Do Not Deny Petitioners Their Rights To Equal Protection Under The Law Because They Are Rationally Related To A Legitimate Statutory Purpose.

Petitioners argue that this Honorable Supreme Court should grant the instant petition because petitioner patient has been deprived of one or more fundamental rights by the immunity provisions in question or, alternatively, either because she is otherwise entitled to strict scrutiny or to heightened scrutiny or because the immunity provisions are not rationally related to a legitimate legislative end.

Petitioners' position is utterly without merit, and their petition should be denied by this Honorable Supreme Court.

Statutory Scheme And Intent Of The PMHPA.

The Pennsylvania Mental Health Procedures Act ("PMHPA"), 50 Pa.C.S.A. Section 7101 et seq., whose

partial immunity provision petitioners attack, is in pertinent part a remedial statute. Its purpose is to guarantee mental patients in Pennsylvania treatment for their illnesses and to insure that it is administered with few restrictions:

> It is the policy of the Commonwealth of Pennsylvania to seek to assure the availability of adequate treatment to persons who are mentally ill.... Treatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed.

50 P.S. Section 7102.

The provision of §7102 for treatment consistent with the least restrictions is designed to eliminate the often brutal long term warehousing and wholesale mistreatment of mental patients that has sometimes been the subject of cases adjudicated by this Court. See, e.g., Youngberg vs. Romeo, 457 U.S. 305, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982).

In order to leave no question as to its humane intent, the statute defines "adequate treatment" in section

7104 (fully quoted above), as including the provision to mental patients of care to relieve pain and distress, medical care, and "care and other services that supplement treatment and aid or promote such recovery [from mental illness]." 50 P.S. §7104.

This Court has noted that the provision of such care necessitates high cost on the part of a state. Pennhurst State School & Hospital vs. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 1540, 67 L.Ed.2d 694 (1981).

The immunity provisions of the act that petitioners attack here further advance its humane intent by guaranteeing those who render crucial decisions regarding treatment of the mentally ill and/or administer care to them that they will have partial immunity from suit. Section 7114 of the act provides that, except for instances of willful misconduct or gross negligence, a care giver under the act "shall not be civilly or criminally liable..."

Section 7114 reduces a chronic cause of abuse to

the mentally ill, namely their subjection to physical restraints for long periods so as to control unpredictable behavior sometimes harmful to themselves or others.

The relationship between §7114 and the statutory goal of providing mental patients with adequate care is thus to relieve professional care givers from the risk of liability for negligence resulting in harm to the patients they treat or to third parties harmed by those patients. Eased restrictions in providing patients with adequate treatment result in part from elimination of legal penalties for good faith decisions.

In the case at bar, the Pennsylvania Supreme Court properly found that the immunity provisions of the act applied to respondents because their rendering of medical care to the mentally ill petitioner, which resulted in curing her of the serious complaints she presented on her admission to respondent hospital, "facilitate[d] the recovery of petitioner from mental illness" pursuant to

§7104 of the act. The application of the posey restraint, which was applied for the short duration of petitioner's stay to make sure she did not harm herself as she had at the mental hospital by trying to walk and falling down--and to ensure she had the required bed rest to speed her recovery, was part of her adequate treatment by respondents.

The Law Governing State Created Immunities

This Honorable Supreme Court determined long ago that states have an almost unfettered ability to create statutory immunities so long as they are rationally related to a legitimate state purpose. In Martinez vs. State of California, 444 U.S. 277, 100 S.Ct. 552, 62 L.Ed.2d 481 (1980), the survivors of a 15-year-old girl tortured and murdered by a parolee from state prison brought suit seeking damages against the state officials who were responsible for the parole of her killer. The actions of the officials were alleged to be negligent, reckless, willful,

wanton and malicious, and plaintiffs sought compensatory and punitive damages of $2 million. Id., at 280, 556.

Defendants relied upon the provisions of the California Government Code providing complete immunity to California state entities and employees for civil suits arising from injuries as a result of parole determinations, and the California courts determined that the statutory immunity applied.

This Court, ruling on the issue of whether the Fourteenth Amendment invalidated the California statute granting defendants absolute immunity, found that it did not do so.[2] Considering the immunity provisions as interfering with a possible property interest--the right of action against defendants, the Court stated:

> [E]ven if one characterizes the immunity defense as a statutory deprivation, it would remain true that the State's interest in

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[2]The Court in Martinez did not have an equal protection claim before it. Id., at 282, 557, at n.4. This issue is addressed in detail below.

> fashioning its own rules of tort law is paramount to any discernible federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational.
>
> We have no difficulty in accepting California's conclusion that there "is a rational relationship between the state's purposes and the statute." [Footnote omitted.].... Whether one agrees or disagrees with California's decision to provide absolute immunity for parole officials in a case of this kind, one cannot deny that it rationally furthers a policy that reasonable lawmakers may favor. As federal judges, we have no authority to pass judgment on the wisdom of the underlying policy determination. We therefore find no merit in the contention that the State's immunity statute is unconstitutional when applied to defeat a tort claim arising under state law.

Id., at 283-84, 557-58, .

The principle of Martinez that a state's interest in fashioning its own tort law is paramount, barring the most exceptional of circumstances--more exceptional than a law giving immunity to officials implicated in enabling the torture and murder of a young girl, has been subsequently

cited with approval by the Court. Logan vs. Zimmerman Brush Company, 455 U.S. 420, 434, 102 S.Ct. 1148, 1156, 71 L.Ed.2d 265 (1982). Furthermore, that principle has a parallel in this Court's rulings on state court procedures. Patterson vs. New York, 432 U.S. 197, 97 S.Ct 2319, 53 L.Ed.2d 281 (1977) (states normally have power to regulate procedures under which their laws are carried out, except under Due Process challenge where fundamental principle of justice offended); Addington vs. Texas, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) (federalism requires allowing state commitment procedures to vary so long as they meet a constitutional minimum).

Turning to the immunity provisions of the Pennsylvania Mental Health Procedures Act, it can scarcely be maintained that they are not rationally related to the legitimate purposes of the statute. The statute is designed to insure adequate care for the mentally ill with

few restrictions, and the immunity provisions further this goal by providing care givers a modicum of protection from liability for the unpredictable actions that may follow from a less restrictive kind of attention than frequently given patients in the past.[3]

Accordingly, when the PMHPA is held to the standard of Martinez, respondent Montgomery Hospital submits that it should be found constitutional.

Equal Protection Analysis

Plaintiff argues that the PMHPA violates the Equal Protection Clause of the Fourteenth Amendment. As demonstrated below, however, equal protection analysis yields the same result as application of Martinez discussed above.

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[3]While respondent knows of no basis for the application of the heightened scrutiny standard under an equal protection analysis, as discussed below, the policy of the PMHPA undoubtedly also sets forth a substantial government interest that would meet the test of such scrutiny.

This Honorable Supreme Court recently restated the principles governing equal protection as follows:

> The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must co-exist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons... We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.

Romer v. Evans, __ U.S. __, 116 S.Ct. 1620, 1627, L.Ed. (1996).

In the case at bar, the only right restricted by the MHPA is the "right" to prosecute a particular cause of action in state court for negligence against respondents. The curtailment of this "right" is the only basis stated in state court proceedings for an equal protection argument.

The "right" to bring a cause of action for negligence is not a fundamental right under the United

States Constitution. The Constitution undeniably protects the rights of citizens to have access to the courts, but--just as undeniably--plaintiff here has had such access, indeed prosecuted her action in the trial court and through two appeals.

Moreover, as noted by the Third Circuit Court of Appeals in Edelstein vs. Wilentz, 812 F.2d 128, 131 (3rd Cir. 1987):

> The Constitution does not create a fundamental right to pursue specific tort actions. States may create immunities which effectively eliminate causes of action, subject only to the requirement that their action not be arbitrary or irrational. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33, 102 S.Ct. 1148, 1155-56, 71 L.Ed.2d 265 (1982); Martinez v. California, 444 U.S. 277, 282 & n. 5, 100 S.Ct. 553, 557 & n. 5. 62 L.Ed.2d 481 (1980); Ferri v. Ackerman, 444 U.S. 193, 198, 100 S.Ct. 402, 406, 62 L.Ed. 2d 481 (1980); see also Davidson v. O'Lone, 752 F.2d 817, 830 (3d Cir. 1984) (en banc), aff'd sub nom., Davidson v. Cannon, 474 U.S. 344, 106 S.Ct. 668, 88 L.Ed.2d 677 (1986).

Petitioners' argue that this case concerns the

fundamental rights established by this Honorable Supreme Court on behalf of mentally retarded patients in Youngberg vs. Romeo, 457 U.S. 307, 102 S.Ct 2452, 73 L.Ed.2d 28 (1982). This argument is misleading. Youngberg concerned the long term treatment of mentally retarded patients in a state institution.

By contrast, this case concerns only claims for damages based upon allegedly negligent short term medical care. The fact that such care involved the administration of modest restraints to enhance petitioner's recovery, with unpredictably tragic consequences, scarcely transforms the case into one involving safety and freedom of movement in Youngberg. Indeed, a greater restriction of petitioner's freedom of movement might have prevented the injury in question.

Equally to the point, as noted above, petitioners have never before stated claims upon these bases. Rather, they have asserted only their alleged right to money

damages for averred negligence on the part of respondents.

Petitioners also make a meritless argument urging treatment of the class of those affected by the PMHSA as suspect and entitled to intermediate scrutiny.

Initially, respondent notes that petitioners err in assuming that the class in question is made up exclusively of mentally ill individuals or even including only relatives who might share in money recovered as a result of alleged negligence by those who benefit from the limited immunity provisions of the act. As noted by the dissenting judge on the Pennsylvania Superior Court, the immunity provisions also affect third parties who are injured by mental patients as a result of the decisions or actions of professional care givers. Thus it is fallacious to assume that only mental health patients form the class petitioners invoke. (A.41a). Indeed, limited immunity would apply even where the injured party is another care giver.

Furthermore, even assuming that the class were

constituted solely of mental patients, petitioners do not and cannot cite any authority for the treatment of mental patients as a suspect class or one entitled to intermediate scrutiny for purposes of equal protection. Suspect classes recognized by the Court arise out of classifications related to race, national origin, and alienage. Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 440-41, 105 S.Ct. 3249, 3254-55, 87 L.Ed 2d 313 (1985). Heightened scrutiny has been accorded to classes determined by gender and illegitimacy. Id.

As the Court recently noted:

> We have applied rational-basis review in previous cases involving the mentally retarded and the mentally ill. See Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 105 S.Ct. 3249, 87 L.Ed 2d 313 (1985); Schweiker v. Wilson, supra. [450 U.S. 221, 234, 101 S.Ct. 1074, 1082, 67 L.Ed.2d 186 (1981)] In neither case did we purport to apply a different standard of rational-basis review from that just described.

Heller vs. Doe by Doe, 509 U.S. 322, 113 S.Ct. 2637,

125 L.Ed.2d 257 (1993).

Heller, which evaluated the equal protection significance of different provisions by a state for the commitment of the retarded and the mentally ill, determined that the distinctions between the statutes were rationally based and therefore constitutional.

Petitioners argue that the Court should accept this case for reasons having to do with the Court's analytical framework regarding equal protection and in the process accord the mentally ill a level of analysis they have not been accorded in past decisions. Respondents believe that the Court's caseload will afford more appropriate opportunities for re-examination of its analytical framework, if appropriate, than a case whose statutorily affected class is greater than simply the mentally ill and whose contested right is the right to bring a cause of action for negligence.

In sum, petitioners have presented no basis for the

application of any standard other than the rational basis standard of Heller and Martinez, supra.

Finally, respondent notes than in each of the three circuit court cases of which it is aware in which state immunity statutes were challenged under the Equal Protection Cause of the U.S. Constitution, the court applied a rational basis examination of the immunity statute and upheld it:

--Grimes vs. Pearl River Valley Water Supply District, 930 F.2d 441, 444 (5th Cir. 1991)(sovereign immunity statute rationally related to legitimate government purpose; class of those injured by political subdivisions not suspect);

--Kranson v. Valley Crest Nursing Home, 755 F.2d 46, 52-53 (1985)(statute precluding medical malpractice or negligence suits against municipally owned nursing homes rationally related to legitimate government state interest; class of patients in municipally operated health care

institutions not a suspect classification, entitlement to monetary damages for negligence never held to be fundamental under Constitution);

--Aubertin v. Board of City Commissioners of Woodson City, 588 F.2d 781 (1978)(law providing for immunity from negligence for road construction and maintenance of counties but not of municipalities rationally related to legitimate state objectives).

Of these cases, Kranson is particularly noteworthy here. The statute at issue addressed those rendering care pursuant to state requirements. The immunity given by the statute, as in the PMHPA, was to negligence suits only. The class was made up of individuals benefiting from care administered by or pursuant to local governments.

In sum, Kranson closely parallels the instant case; and its logic should rule here.

CONCLUSION

For all the above reasons, respondent Montgomery Hospital respectfully requests this Honorable Court to deny the instant Petition for Certiorari.

Respectfully submitted,

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